

Remarks

Claims 1 And 7, As Amended, Are Not Indefinite

Claims 1 and 7 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. The Office Action states that the term "substantially", which appears at line 12 of claim 1 and at line 13 of claim 7, is indefinite. Applicants have now amended claims 1 and 7 to remove the term considered indefinite.

Claims 1 And 7, As Amended, and Claim 8 Are Patentable Over A Combination Of U.S. Patent No. 5,025,175 Of Dubois And U.S. Patent No. 6,778,097 Of Kajita Et Al.

Claims 1, 7 and 8 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the Dubois patent in view of the Kajita patent.

The Dubois patent describes a safety device for a meat cutting machine which is electrically wired to a radio receiver. The operator of the machine wears a wire mesh glove and carries a portable radio transmitter that transmits a signal to the receiver. The transmitter includes an antenna that is grounded to the glove. When the glove touches the grounded frame of the machine, the transmitter antenna will be grounded, thus interrupting the transmission of the signal from the transmitter. This causes a relay to open on the machine, cutting the electrical power to the motor and stopping the machine. The Dubois patent thus discloses a safety "stop" mechanism by which the machine is stopped by interruption of a radio signal by contact between the operator's glove and the frame of the machine.

The Kajita patent describes a system for providing remote control operation of construction equipment by radio communication between a remote operator station and an item of construction equipment. The Kajita system includes two separate radio control signal transmitters, a primary high-directionality high-frequency (preferably 50GHz) transmitter and an emergency spread-spectrum low-frequency (preferably 429MHz) transmitter having a radio wave directionality that is lower than that of the first transmitter to allow communication with the remote equipment when communication through the first transmitter is impossible. Each of these control signal systems allows for the control of an item of equipment from a remote location by the reception of a transmitted radio signal.

The Office Action states that "Dubois failed to teach 'an equipment lockout activating member to transmit a stop signal'. However, Kajita et al teach on column 25 line 11-16, a transmitter sends out a signal to stop the engine." Applicants agree that the Dubois patent fails to teach the transmission of a "stop signal", but they disagree that such teaching is found in the Kajita reference. As set forth in the Kajita patent at column 8, lines 20-29, if communication between the primary radio control system and the construction machine is interrupted, the machine is not stopped or disabled. Instead, a second control signal is transmitted to the working machine by the emergency communication system to continue operations or to retract or recover the working machine to a safe place. Thus, the Kajita patent does not teach the transmission of a "stop signal", but rather the transmission of a second radio signal that is intended to re-establish **control** over the item of equipment from a remote location.

The Office Action suggests that a person having ordinary skill in the art to which the invention relates would have considered it obvious at the time the invention was made to combine these references to create a construction equipment lockout system in which either the interruption of a first radio signal or the transmission of a second "stop" signal could disable the operation of at least one function performed by the equipment. However, there is no reason, suggestion or motivation found in either reference whereby a person of ordinary skill in the field of the invention would make the suggested combination. The Dubois reference does not relate to construction equipment, as the Office Action acknowledges, whereas the Kajita patent does. However, the Kajita patent is not concerned with stopping the operation of at least one function of an item of equipment, but rather with controlling all of the functions of such equipment from a remote location. Therefore, Applicants do not believe that a person having ordinary skill in the art to which the invention relates would be motivated to combine the references in the manner suggested. The Federal Circuit has stated that "[t]he combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness. There must be some reason, suggestion or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge cannot come from the applicant's invention itself." In re Oetiker, 977 F. 2d 1443, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992).

Furthermore, Applicants believe even if the suggested combination of the Dubois and Kajita references were made, it would not teach the invention of claims 1 and 7, as amended, and 8, since the Kajita reference already teaches that upon interruption of a radio signal, the machine is not disabled, but a second "emergency" signal is initiated to re-establish control over the machine.

Finally, neither the Kajita patent nor the Dubois patent disclose any radio transmission in periodic bursts, as required by Applicants' claims 1 and 7, as amended, and 8. However, the Office Action states that "it is inherent that any radio signal is sent out as a burst", without citing a reference to support this statement. Applicants disagree that it is inherent that any radio signal is sent out as a burst, and they respectfully request that the Examiner withdraw or support this statement.

Applicants respectfully submit that all of their claims, as now presented, are patentable over the prior art references cited in the Office Action, including those made of record but not relied upon. Applicants respectfully request, therefore: (1) that the §112 rejection of claims 1 and 7 be withdrawn in view of the amendments of those claims; (2) that the §103 rejection of claims 1, 7 and 8 be withdrawn in view of the arguments set forth herein; (3) that the objections to claims 2-5 be withdrawn in view of the amendments and arguments presented herein; and (4) that claims 1-8, as now presented, be allowed.

Respectfully submitted,



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